

ORDINANCE NO. 31-2004

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING CHAPTER 1.11 OF THE MUNICIPAL CODE
REGARDING APPEAL HEARINGS AND CREATING A NEW CHAPTER 1.12
REGARDING ADMINISTRATIVE CITATIONS**

The City Council of the City of Elk Grove does ordain as follows:

SECTION 1. PURPOSE AND AUTHORITY.

The purpose of this Ordinance is to create a unified procedure for the hearing of administrative appeals in the City of Elk Grove. This ordinance is enacted under the authority granted to cities by Article XI, Section 7 of the California Constitution.

SECTION 2. APPEALS AND HEARINGS.

The City Council hereby amends Chapter 1.11 of the Elk Grove Municipal Code to read as follows:

Chapter 1.11

APPEALS

Sections

- 1.11.010 Application.
- 1.11.020 Conflict with other chapters of the Municipal Code.
- 1.11.030 Filing a request for appeal.
- 1.11.040 City's rejection of Request for Appeal.
- 1.11.050 Setting hearing date, time, and place.
- 1.11.060 Notice of hearing.
- 1.11.070 Qualifications of Appeals Hearing Officers.
- 1.11.080 Developing a Pool of Appeals Hearing Officers.
- 1.11.090 Powers of Appeals Hearing Officer.
- 1.11.100 Procedures for conducting administrative appeal hearings.
- 1.11.110 Continuing jurisdiction.

- 1.11.120 Failure to appear at administrative appeal hearing.
- 1.11.130 Administrative Appeal Decision.
- 1.11.140 Effect of Administrative Appeal Decision.
- 1.11.150 Judicial review.
- 1.11.160 Failure to comply with Administrative Appeal Decision.
- 1.11.170 Deferral of appeal fees.

§ 1.11.010 Application.

This Chapter is intended as the sole means of quasi-judicial administrative appeal from the issuance of any citation pursuant to Chapter 1.12 of the Elk Grove Municipal Code, and from any final decision or ruling resulting from a department-level review or appeal, including decisions of the City Manager and his or her designee(s). This Chapter shall not be a means of appeal from the decision of any board or commission of the City, including but not limited to the Planning Commission and the Building Board of Appeals, where state law requires the appeal be heard by the City Council or another agency.

§ 1.11.020 Conflict with other chapters of the Municipal Code.

To the extent this Chapter conflicts with any quasi-judicial appeal procedure already set out in the Elk Grove Municipal Code, the procedures in this Chapter shall control.

§ 1.11.030 Filing a request for appeal.

A. The appellant shall file with the City Clerk a request for appeal within the time limits provided by law or by ordinance for the filing of such an appeal or, if none are otherwise specified, within ten (10) business days after the City's service of the final departmental decision being appealed. The appellant's request for appeal under this Chapter shall be called a Request for Appeal.

B. The Request for Appeal shall specify the name, mailing address and telephone number of the appellant and such other information required by law or by ordinance to be provided with the appeal. The appellant shall also attach a written statement specifying in detail the grounds for the appeal and attach a copy of the decision or order being appealed.

C. The Request for Appeal shall be accompanied by a fee in the amount established by resolution of the City Council, unless payment of the fee is deferred in accordance with Section 1.11.170.

§ 1.11.040 City's rejection of Request for Appeal.

The City Clerk, or his/her designee, shall reject for filing any Request for Appeal that does not substantially comply with the requirements of Section 1.11.030. The City Clerk, or his/her designee, shall mail a Notice rejecting the appeal request to the appellant at the address specified in the Request for Appeal. This Notice shall be called the Notice Rejecting Appeal Request. The Notice Rejecting Appeal Request shall specify the reason(s) for the rejection of the appeal. The appellant shall be afforded the opportunity to correct the identified defect(s) within five (5) business days following the date the City mailed the Notice Rejecting Appeal Request. The corrected Request for Appeal must be received by the City Clerk on or before the fifth business day, or the appeal deadline is deemed expired. In that event, the underlying departmental decision will be considered final, the alleged violations deemed admitted, and any accrued fines immediately due and payable.

§ 1.11.050 Setting hearing date, time, and place.

After the City Clerk, or his or her designee, accepts a Request for Appeal that meets the requirements of this Chapter, he or she shall set the date, time, and place for the hearing to take place no later than fifteen (15) business days after such acceptance.

§ 1.11.060 Notice of hearing.

Notice indicating the time, place and date of the administrative appeal hearing shall be served by the City Clerk or his/her designee upon the appellant either personally or by delivering a copy by certified U.S. mail, postage prepaid, and return receipt requested or such other delivery method that is reasonably calculated to provide actual notice to the appellant, not less than five (5) business days prior to the hearing date. The notice, which shall be called the Notice of Hearing, shall include a list of alleged code violations, the name(s) of the Appeals Hearing Officer(s) selected to hear the matter, the procedures for disqualification of an Appeals Hearing Officer, and any procedures applicable to the hearing, including notice of when written testimony must be submitted to the Appeals Hearing Officer.

§ 1.11.070 Qualifications of Appeals Hearing Officers.

The officers selected to hear appeals shall be known as Appeals Hearing Officers. Appeals Hearing Officers shall be licensed attorneys of the State Bar of California in good standing. The City Council shall by resolution promulgate rules and procedures as are necessary to establish one or more qualified persons who are capable of acting on behalf of the City as Appeals Hearing Officers, and who shall be available on an as-needed basis, as determined by the City.

§ 1.11.080 Developing a Pool of Appeals Hearing Officers.

A pool of Appeals Hearing Officers shall be created by the City Manager or his/her designee to hear appeals pursuant to the rules and procedures adopted by resolution of the City Council.

§ 1.11.090 Powers of Appeals Hearing Officer.

The Appeals Hearing Officer may do any of the following: explain the issues, meaning of terms not understood by the parties, and appeal procedures; question parties and witnesses to obtain necessary facts; accept and consider testimony and documents offered by the parties or witnesses; take official notice of well-established matters of common knowledge and/or public record; ascertain whether stipulations by the parties, if any, may be entered into the record.

§ 1.11.100 Procedures for conducting administrative appeal hearings.

Administrative appeal hearings are intended to be informal in nature. The Appeals Hearing Officer is authorized to take testimony. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. However, the appellant shall have the right to present testimony and documentary and physical evidence on his/her/its behalf and shall have the right to examine any witnesses and rebut any evidence presented against him or her. The City, by Department Director or his or her designee, shall have the burden of proving the existence of the violation by a preponderance of evidence. The City Council may promulgate by resolution additional rules and procedures for the conduct of administrative hearings.

1.11.110 Continuing jurisdiction.

The Appeals Hearing Officer shall continue to have jurisdiction over the subject matter of an administrative appeal for the purposes of granting a continuance, ensuring compliance with a quasi-judicial Administrative Appeal Decision, modifying an Administrative Appeal Decision, or where extraordinary circumstances exist, granting a new hearing.

1.11.120 Failure to appear at administrative appeal hearing.

Failure of the appellant to either abate the conditions specified in the department level decision and/or citation issued pursuant to Chapter 1.12, and timely pay any accrued fines, or to appear at the hearing after Notice of Hearing has been served shall be deemed a waiver of the right to a hearing and an admission by such owner or responsible party of the existence of the violations of the Municipal Code as specified or referenced by the Notice of Hearing. In that event, the underlying department decision and/or allegations in the citation issued pursuant to Section 1.12 become final.

§ 1.11.130 Administrative Appeal Decision.

A. After considering all of the testimony and evidence submitted at the administrative appeal hearing, the Appeals Hearing Officer shall issue a written Administrative Appeal Decision. The Administrative Appeal Decision of the Appeals Hearing Officer shall be issued in accordance with the rules and procedures promulgated by resolution of City Council and shall be known as an Administrative Appeal Decision.

B. The Administrative Appeal Decision shall become final on the date the Appeals Hearing Officer serves the Administrative Appeal Decision. The Appeals Hearing Officer shall serve one copy of the Administrative Appeal Decision to the respondent to the City Clerk for the City of Elk Grove and one copy on the appellant. The City Clerk shall file a copy of the Administrative Appeal with the appropriate Department Director. The Administrative Appeal Decision shall be served either by personal service or by certified mail.

§ 1.11.140 Effect of Administrative Appeal Decision.

An Administrative Appeal Decision of an Appeals Hearing Officer shall be final and no appeal may be made to the City Council.

§ 1.11.150 Judicial review.

Administrative Appeal Decisions are subject to judicial review in accordance with Section 1094.6 of the California Code of Civil Procedure.

§ 1.11.160 Failure to comply with Administrative Appeal Decision.

A. After the Appeals Hearing Officer issues an Administrative Appeal Decision, the Department Director or his/her designee, shall monitor violations and determine compliance.

B. Upon the failure of a party to comply with the terms and deadlines set forth in the Administrative Appeal Decision, the Department Director or his/her designee, may use all appropriate legal means to recover all civil penalties and administrative costs and to obtain compliance with the Administrative Appeal Decision, which includes seeking an injunction.

C. Failure to comply with an Administrative Appeal Decision constitutes a misdemeanor.

§ 1.11.170 Deferral of appeal fees.

A. The City Clerk, or his/her designee, may defer the payment of a fee required for filing an appeal as specified in Section 1.11.030 if the appellant meets the requirements established by resolution of the City Council.

B. Any person who willfully provides the City Clerk, or his/her designee, with false statements of material facts in an application for a fee deferral is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of a period of not more than six (6) months, or by both such fine and imprisonment.

C. The decision of the City Clerk, or his/her designee, on the deferral of fees shall be final and conclusive and there shall be no appeal from this decision.

SECTION 3. ADMINISTRATIVE CITATIONS

The City Council hereby adds a new Chapter 1.12 to the Elk Grove Municipal Code to read as follows:

Chapter 1.12

ADMINISTRATIVE CITATIONS -- ENFORCEMENT

Section

1.12.010 Administrative Citations -- Enforcement – Authority

§ 1.12.010 Administrative Citations -- Enforcement – Authority

The City Manager and/or his or her designee shall promulgate rules and procedures as necessary for the issuance of civil, administrative citations requiring the immediate abatement of violations of the Elk Grove Municipal Code. The administrative citations shall identify the alleged violation(s), state the manner and deadline(s) for abatement, and set the date on which fines will automatically accrue should the abatement deadlines not be met.

SECTION 4. MANDATORY DUTY OF CARE.

This ordinance is not intended to and shall not be construed or given effect in any manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the

invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

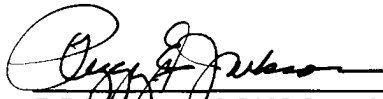
SECTION 6. EFFECTIVE DATE AND PUBLICATION.

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the Ordinance within fifteen (15) days after its passage, a summary of the Ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to section 36933(c)(1) of the Government Code.

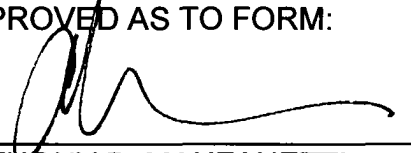
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 3rd day of November 2004.


SOPHIA SCHERMAN MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI
CITY ATTORNEY

Effective Date: December 3, 2004

AYES: Scherman, Soares, Briggs, Cooper, Leary
NOES: None
ABSTAIN: None
ABSENT: None